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HOME (ELECTIONS) DEPARTMENT

NOTIFICATION

The 1st February 2006

No. 338—VE(A)-13/2006-Elec.—The following Notification, dated the 17th January 2006 issued by the Election Commission of India, New Delhi is hereby published for general information.

By order

ALKA PANDA

Chief Electoral Officer & *ex officio*
Commissioner-cum-Secretary to Government

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110 001

Dated the 17th January 2006

27 Pausa, 1927 (Saka)

NOTIFICATION

No. 82/OR-LA(4/2004)/2006—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated the 23rd November 2005 of the Orissa High Court in Election Petition No. 4 of 2004.

IN THE HIGH COURT OF ORISSA, CUTTACK
ELPET No. 4 of 2004

In the matter of an application under Sections 80 and 100 of the Representation of People Act, 1951.

B. Dandapani Patro

..

Petitioner

Versus

Bikram Keshari Arukha

..

Respondent

For Petitioner

..

M/s. S. P. Misra, P. K. Ray &
P. K. Panda.

For Respondent

..

M/s. A. K. Mohanty, J. Sahu,
H. K. Tripathy, S. P. Nayak,
M. K. Rout and J. P. Patra.*Present :***The Honourable Mr. Justice R. N. Biswal**

Date of Judgement—The 23rd November 2005

R. N. Biswal, J. The petitioner has filed this ELPET with a prayer to declare the election of the respondent to the Orissa Legislative Assembly, from the single member, Bhanjanagar Constituency No. 66 as void.

As per the petition, the petitioner was a candidate on behalf of the Congress-I Party in the last General Election, 2004 for the Orissa Legislative Assembly from the single member, Bhanjanagar Assembly Constituency No. 66 and the respondent who was declared elected was a Biju Janata Dal candidate. There was no other candidate.

On the 28th February 2004 notification was published inviting objection, if any for correction of the existing Electoral Roll prepared for election of the Assembly constituted in January 2000. Another notification was published on the 24th March 2004 for holding election to the Orissa Legislative Assembly, fixing the last date for filing of nomination to the 31st March 2004. The petitioner and the respondent filed their respective nominations on the 29th March 2004 and the 31st March 2004 respectively. On the 7th April 2004 the petitioner was supplied with a copy of the Electoral Roll and to his utter surprise found names of about 14,000 electors to have been struck off the existing Electoral Roll, as in force at the time when the notice dated the 28th February 2004 was published. The same was done without giving an opportunity of being heard to the electors whose names were struck off. So, on the 7th April 2004 the petitioner made a representation to the Chief Electoral Officer against such illegal action of the Electoral Registration Officer. One Bhajaman Sahoo also made a similar representation. Again on the 12th April 2004 the petitioner sent a complaint to the Chief Electoral Officer, Orissa with copy to the Election Commission, Government of India against the illegality committed by the Registering Officer. Oncoming to know about such representation, the Returning Officer-*cum*-Sub-Collector, Bhanjanagar took back the Electoral Roll which was supplied to the petitioner and it was returned to him on the 10th April 2004 deleting the names of two thousand electors more. During the time of election held on the 20th April 2004 when some of the electors, including witness Nos. 1 to 4 for the petitioner, whose names were there in the finally published Electoral Roll, went to the polling station to cast their votes they were dismayed to know that their names had been scored off the Electoral Roll. The total number of votes polled, were 99,968 and the petitioner was defeated by a margin of 5,426 votes only. Had the names of these 14,000 voters not been struck off and had they cast their votes, the petitioner would have won the

election. Further, the electronic machine by which the votes were taken was tampered with at the behest of the respondent in collusion with the Returning Officer. Furthermore, it is alleged that the names of 14,000 electors were deleted because of undue influence of the respondent who contested from the Biju Janata Dal, which was in power then. Under such circumstances the petitioner filed the petition to declare the election of the respondent void, as mentioned earlier. The said respondent in his objection stated that since no ground specified in sub-section (1) of Sections 100 and 101 of the Representation of the People Act, 1951 has been set out to set aside the election, the Election Petition is liable to be dismissed under Section 86 of the said Act.

On the basis of instructions received from the Election Commission of India, the Government of Orissa in Home (Election) Department proceeded to conduct summary revision of the Electoral Roll with reference to the 1st January 2004 as the qualifying date and the said exercise was taken up with effect from the 17th November 2003. As per instruction of the Election Commission, special campaigns were scheduled to be held on 6th and 7th of December 2003 and date of disposal of claims and objections was fixed to the 15th January 2004 and final publication of Electoral Roll was to be made on the 20th January 2004. However, the said schedule was revised from time to time and on the 14th February 2004 a Fax message was received by the Chief Electoral Officer, Orissa from the Election Commission of India stating that after scrutiny of data received from the C. E. O. on the 13th February 2004 and on considering the report of his team, deputed to the State of Orissa the Election Commission formulated certain course of actions to improve fidelity in the Electoral Roll of the State of Orissa, and directed that steps should be taken as per the formulated course of actions so that final publication of the Electoral Roll would be made on the 28th February 2004. On receipt of the aforesaid letter the Additional C. E. O.-cum-Additional Secretary, Government of Orissa, Home (Election) Department, through Fax message directed the District Election Officers to submit the final reports before the 20th February 2004, so as to enable him to send the same to the Election Commission of India for final publication of Electoral Roll in time. Ultimately the Commission gave approval for final publication of the Electoral Roll, 2004 in respect of the Assembly Constituencies, on the 10th March 2004. On the 9th March 2004 it was again communicated to the Electoral Registration Officers of some of the Constituencies, including Bhanjanagar that the Commission decided that the Assembly Constituencies or Polling stations with E/P ratio more than 75%, special check and measure should be taken to eliminate any bogus voting on the date of poll. Accordingly, special drive was taken up to check and verify the list of voters in respect of booths where E/P ratio was more than 75%, by deputing a team of officers to cross-check the names of the voters and their eligibility. While conducting such cross verification, names of some voters of some booths were scored off the Electoral Roll as they were found dead or otherwise not eligible to be registered as voters. Thereafter final voter list was published on the 10th March 2004. If in fact names of 14,000 electors were scored off illegally, they or any of them could have appealed under Rule 23 of the Registration of Electors Rules, but no such appeal was filed. There was no amendment, transposition or deletion of any entry in the Electoral Roll after the last date of filing the nomination. Moreover, there is no specific pleading that the 14,000 voters whose names were said to have been scored off the Electoral Roll would have cast their votes in favour of the petitioner. In absence of such pleadings, deletion of names of 14,000 voters cannot be said to have materially affected the result of the election of the respondent.

The display section of the electronic voting machine did not function in Booth No. 108 of Bhanjanagar Assembly Constituency. The total number of voters in the said booth being 728 only, non-counting of those votes can not be said to have materially affected the result of the election of the respondent. The pleading of the petitioner is silent with regard to detail of the undue influence of the respondent or his agent on the Government officials to further his prospect of election. On all these grounds the respondent pressed to dismiss the petition with cost.

On basis of the above pleadings of the parties, the following issues were framed :—

- (1) Whether the names of 14,000 voters have been deleted from the Electoral Roll in accordance with the provisions of the Representation of the People Act and the Rules ?
- (2) Whether the petitioner made representations on the 7th April 2004 and the 12th April 2004 to the Chief Election Officer regarding illegal deletion of names of 14,000 voters from the Electoral Roll ?
- (3) Whether copy of the Electoral Roll supplied to the petitioner at the first instance was taken back by the Returning Officer-cum-Sub-Collector and again a fresh list of Electoral Roll was supplied to him on the 10th April 2004 ?
- (4) If there was deletion of names of 14,000 voters from the Electoral Roll, the date on which the same were deleted ?
- (5) Whether the election petition is maintainable when the deletion of the names of the voters in question was not challenged in any appellate forum ?
- (6) Whether because of deletion of the names of 14,000 voters from the Electoral Roll, the entire election process stands vitiated ?

In order to establish his case the petitioner examined seven witnesses including himself and two official witnesses and proved some documents, while Respondent, besides proving some documents, preferred to examine himself and another witness only to prove his case.

Issue Nos. 1, 3 and 4—For the sake of convenience these three issues are taken up together.

It is the case of the petitioner that names of 14,000 electors which were subsequently found struck off were there in the finally published Electoral Roll dated the 10th March 2004. Being a contesting candidate when he was supplied with a copy of the Electoral Roll on the 7th April 2004, he was surprised to see those names to have been scored off the existing Electoral Roll. In Kulada Booth only, names of 3,000 electors were found to have been scored off the Electoral Roll. On the 7th April 2004 itself the petitioner and Bhajaman Sahoo made a representation to the Chief Electoral Officer in this regard. Oncoming to know about this representation, the Returning Officer-cum-Sub-Collector, Bhanjanagar took back the Electoral Roll supplied to the petitioner and returned it to him on the 10th April 2004 deleting 2,000 names more. On the other hand, it is the case of the respondent that as per the direction of the Election Commission of India, special revision in respect of the Electoral Roll was taken up, whereafter names of some persons were scored off and names of some other persons were included in the existing Electoral Roll before it was finally published on the 10th March 2004. It transpires from the evidence of P. Ws. 1 to 4 that on the 12th March 2004, their names were found to have been registered in the Electoral Roll published on the 10th March 2004, but when they went to cast their votes on the 20th April 2004, they were denied to exercise their franchise on the ground that their names did not find place in the Electoral Roll. It further transpires from their evidence and the evidence of P. W. 5 (Petitioner) that names of 14,000 electors were scored off the Electoral Roll after it was finally published on the 10th March 2004. It further transpires from the evidence of P. W. 5 (Petitioner) that he was supplied with a copy

of the Electoral Roll on the 7th April 2004, where deletion of names of three thousand voters was noticed. When he objected to it, the Returning Officer-*cum*-Sub-Collector, Bhanjanagar took back the said Electoral Roll and again on the 10th April 2004 he supplied him another copy of the Electoral Roll with deletion of names of two thousand more voters. As found from the evidence of P. W. 6, the Chief Electoral Officer and P. W. 7 the Electoral Registration Officer, names of about 14,000 voters were scored off the existing list on the ground of death and change of ordinary place of residence, after special revision of the same was taken place in accordance with the direction of the Election Commission of India, before the Electoral Roll was finally published on the 10th March 2004.

As per Rule 22(2) (c) of Registration of Electors Rules, 1960, two copies of the Electoral Roll as finally published with the list of amendments, if any, of same are to be supplied to every political party for which a symbol has been exclusively reserved by the Election Commission. In accordance with this provision as found from the evidence of P. W. 7, copy of the finally published Electoral Roll was supplied to Shri Nagendra Tripathy, free of cost in token whereof he gave a receipt, Ext. B. It is found from Ext. B that Shri Tripathy received two sets of Electoral Roll from P. W. 7 on the 25th March 2004. A copy of the finally published Electoral Roll was also made over to Shri Bhajamana Sahoo on the 31st March 2004 as he was authorised to receive the same on behalf of the petitioner. So, in fact, if the Electoral Roll finally published was changed in two occasions as per the evidence of P. W. 5, he could have filed the finally published Electoral Roll supplied to Shri Bhajamana Sahoo or Shri Nagendra Tripathy. When it has not been done so, it can be inferred that the names of persons found to be scored off the Electoral Roll were in fact scored off before it was finally published.

Learned counsel for the petitioner submitted that even if it is held that in fact the names of 14,000 electors were scored off the Electoral Roll on the ground of death and change of ordinary place of residence before it was finally published, still then it can not be said to be a valid Electoral Roll, as no chance of being heard was given to the electors whose names were scored off the Electoral Roll before such scoring off, as required under Section 22 of the Representation of the People Act, 1950 read with Rule 21 A of Registration of Electors Rules, 1960. Section 22 of the Representation of the People Act, 1950 reads as follows :—

“22. Correction of entries in Electoral Rolls :

If the electoral Registration Officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit that any entry in the Electoral Roll of the constituency—

(a) is erroneous or defective in any particular ;

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency ; or

(c) should be detected on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll the Electoral Registration Officer shall subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry :

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the Electoral Roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.”

Rule 21 A of Registration of Electors Rules, 1960 reads as follows :—

“21 A. Deletion of names :

If it appears to the registration officer at any time before the final publication of the roll that owing to inadvertence or error or otherwise, the names of dead persons or of persons who have ceased to be or are not ordinarily residents in the constituency or of persons who are otherwise not entitled to be registered in that roll, have been included in the roll and that remedial action should be taken under this rule, the registration officer, shall—

(a) prepare a list of the names and other details of such electors ;

(b) exhibit on the noticeboard of his office a copy of the list together with a notice as to the time and place at which the question of deletion of these names from the roll will be considered and also publish the list and the notice in such other manner as he may think fit ; and

(c) after considering any verbal or written objections that may be preferred decide whether all or any of the names should be deleted from the roll :

Provided that before taking any action under this rule in respect of any person on the ground that he has ceased to be, or is not, ordinarily resident in the constituency, or is otherwise not entitled to be registered in that roll, the registration officer shall make every endeavour to give him a reasonable opportunity to show cause why the action proposed should not be taken in relation to him.”

So, as per Section 22 of the Representation of the People Act, 1950 read with the proviso to this rule, if it appears to the Registration Officer at any time before final publication of the Electoral Roll, that due to inadvertence or otherwise the name of a person who ceased to be, or is not ordinarily resident of the constituency concerned or is otherwise not entitled to be registered in the roll has been included in the Electoral Roll, he shall correct the same, after making every endeavour to give him reasonable opportunity to show cause as to why his name would not be deleted.

Learned Counsel for the respondent contended that as per sub-section (3) of Section 21 of the Representation of the People Act, 1950, the Election Commission may wink at the provision under Section 22 of Representation of the People Act 1950 and Rule 21 A of the Registration of Electors Rules, 1960 and direct for a special revision of the Electoral Roll of any constituency in the manner as he thinks fit. In the present case, the Election Commission vide Ext. 7 directed to take up a special drive to cull out multiple entries by use of software in all Assembly Constituencies with E/P ratio in the range of 70—75%. Since Bhanjanagar Constituency came under that category, the Electoral Roll was revised by use of software. So, the Electoral Roll prepared can not be said as invalid.

On perusal of Ext. 7, it is found that the Election Commission specifically directed to comply with the provision of Rule 21 A of the Registration of Electors Rules, 1960 while revising the Electoral Roll. So, the submission of Learned Counsel for the respondent can not accepted.

P. Ws. 1 to 4 deposed that no opportunity was given to them to show cause before their names were Registration Officer) also admitted that no opportunity was given to show cause to the elector at serial No. 1472 of Ext. 11 (P. W. 4) before his name was scored off the Electoral Roll. P. W. 6 (Chief Electoral Officer) failed to say whether opportunity was given to the persons whose names were scored off the Electoral Roll to show cause before their names were scored off. So, it is held that the Electoral Roll was not prepared in accordance with the Representation of the People Act, and Rules made thereunder. There is no evidence with regard to the specific date on which the names of 14,000 voters were scored off the Electoral Roll, but it is held that the same were scored off before final publication of the Electoral Roll. It is also held that the Electoral Roll supplied to the petitioner at first instance was not taken back by the Returning Officer, so the question of supplying him a fresh Electoral Roll on the 10th April 2004 does not arise.

Issue No. 2

It is found from the evidence of P. W. 5, the Petitioner himself that on the 7th April 2004 he himself and one Shri Bhajamana Sahoo made objection before the Chief Electoral Officer against illegal deletion of names of electors from the finally published Electoral Roll, with copy to Election Commission. Again on the 12th April 2004 he alone raised objection in that respect. It is found from the evidence of P. W. 6 (Chief Electoral Officer) that a joint complaint made by the petitioner and one Shri Bhajamana Sahoo on the allegation that the revision of the Electoral Roll was not made in accordance with law and that the enumerators were biased was received in her office on the 7th April 2004. Another complaint made by the petitioner and said Shri Bhajamana Sahoo, almost on similar allegation was received by her office on the 9th April 2004. She denied the receipt of any other complaint from Bhanjanagar Constituency. Except the oral testimony of P. W. 5 there is no any reliable evidence from his side to prove that he had sent any complaint on the 12th April 2004. So, it is held that the Petitioner and Shri Bhajamana Sahoo made two joint representations on the 7th April 2004 and the 9th April 2004 to the Chief Electoral Officer, alleging that the revision of Electoral Roll was not made in accordance with law and that the enumerators were biased, without specific allegation that names of 14,000 voters were illegally deleted from the Electoral Roll and that no representation was made on the 12th April 2004.

Issue No. 5

It is an admitted fact that the last date for filing of nomination was the 31st March 2004. As per Section 23 (3) of the Representation of the People Act, 1951, no amendment, transposition or deletion shall be made under Section 21 and no direction for inclusion of names in the Electoral Roll of a constituency shall be given after the last date of making nomination for an election. In the present case, since both the two complaints were made after the last date of filing the nomination, no action was taken thereon, as found from the evidence of P. W. 6. In absence of any decision on the aforesaid complaints, there is no scope for filing appeal. Therefore, it can not be said that the election petition is not maintainable because of not challenging the deletion of the names of voters in the appellate forum.

Issue No. 6 :

Sub-section (1) of Section 100 of the Representation of the People Act, 1951 enumerates the grounds on which an election can be declared void ; it reads as follows :

“100. Grounds for declaring election to be void :

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of this Act or the Government or Union Territories Act, 1963 (20 of 1963) ; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(c) that any nomination has been improperly rejected ; or

(d) that the result of the election in so far as it concerns a returned candidate has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.”

Sub-section (1) of Section 100 can be divided into two parts—clause a to c as one part and clause d the other part. If any of the grounds enumerated in clauses a, b and c is established, subject to the provision of sub-section (2) of Section 100, the election can be declared void. Proof of any of the grounds under clause d alone is not sufficient to declare an election as void. Besides proving any of such grounds, it has also to be proved that the result of the election, in so far as it concerned the returned candidate has been materially affected thereby. In the case at hand, as submitted by learned counsel for the petitioner, the election of the returned candidate has been challenged on the grounds contained in sub-clause (iii) and (iv) of clause d, sub-section (1) of Section 100 of the Representation of the People Act, 1951.

As per his submission, in village Chadiapali 728 electors exercise their franchise through electronic voting machine but due to mechanical defect, it developed, the same could not be retrieved. As such all those 728 votes were rejected in violation of sub-clause (iii) quoted above. As found from the evidence of P.Ws. 1 to 4 the voters of the said booth were ardent supporters of National Congress (I) Party. So, all the votes must have been polled in favour of the petitioner. Since those votes were not taken into consideration, it materially affected the result of the election of the respondent. So, his election should be declared void on this ground alone. As found from the evidence on record since the votes polled through electronic voting machine could not be retrieved, the Chief Electoral Officer solicited suggestions from the Election Commission of India and when

he allowed the result to be declared, then only he declared it. As such there was no illegality. Moreover, in an election, nobody can predict that all the voters of a booth would cast their votes in favour of a particular party. So, it can not be said that all the 728 votes would have gone in favour of the petitioner. Furthermore, since the respondent owned the election by a margin of 5,426 votes, it can not be said that non-consideration of those 728 votes materially affected the result of the election concerning the respondent.

Learned counsel for the petitioner further submitted that names of 14,000 electors were scored off the Electoral Roll without complying with the provision of the Representation of the People Act, 1950 and rules made thereunder. According to him, most of these electors were ardent supporters of National Congress (I) Party as found from the evidence on record. The petitioner was defeated by a margin of only 5,426 votes. The result of the election concerning the respondent has been materially affected because of deletion of names of the 14,000 electors from the Electoral Roll. So, the election of the respondent should be declared void. In support of his submission, he relied upon the decision in “**Baidyanath Panjira vs. Sitaram Mhato and others**” AIR 1970 SC 314.

Learned counsel for the respondent contended that once the final Electoral Roll is published and of nota on that basis, it can not be challenged on the ground that the Electoral Roll was defective.

In the case of “**Nripendra Bahadur Singh vs. Jairam Verma and others**” AIR 1977 SC 1992, the Apex Court held as follows :

“Thus in a catena of cases, this Court has consistently taken the view that the finality of the Electoral Roll can not be challenged in an election petition even if certain irregularities had taken place in the preparation of the Electoral Roll or if subsequent disqualification had taken place and the Electoral Roll had on that score not been corrected before the last hour of making nominations. After that dead line, the Electoral Roll of a constituency can not be interfered with and no one can go behind the entries except for the purpose of considering disqualification under Section 16 of the 1950 Act.”

It has also been held by the Supreme Court in the case of **Indrajit Barua and others vs. Election Commission of India and others** AIR 1986 SC 103 as follows :

“We are of the view that once the final Electoral Rolls are published and elections are held on the basis of such Electoral Rolls, it is not open to anyone to challenge the election from any Constituency or Constituencies on the ground that the Electoral Rolls were defective. That is not a ground available for challenging an election under Section 100 of the Representation of the People Act, 1951.”

As I have held eariller names of 14,000 electors were scored off the Electoral Roll before it was finally published. Election was held on the basis of the said Electoral Roll, so as per the above two decisions, the election can not be challenged on the ground of defective Electoral Roll.

In the case of **Baidyanath Ranjira (Supra)** relied on by learned counsel for the petitioner, name of some of the electors were included in the Electoral Roll after the last date of filing the nomination which is prohibited under Section 23 (3) of the 1950 Act. Furthermore, it was established in that case that the result of election in respect of the returned candidate was materially affected due to inclusion of such names. But in the present case, names of 14,000 electors were scored off the Electoral Roll before the last date of filing the nomination. Moreover, there is no reliable evidence as would be discussed later to hold that the result of the election in so far as the returned candidate is concerned has been materially affected thereby. Burden lies with the petitioner to prove that deletion of names of 14,000 voters from the Electoral Roll materially affected the result of the

election so far as the respondent is concerned. Unless it is proved so, the election can not be declared to be void as held by the Apex Court in the case of **Vasnist Narain Sharma vrs. Dev Chandra and others** AIR 1954 SC 513, "**Santosh Yadav vrs. Narendra Singh**" AIR 2002 SC 241, "**Paoki Haokip vrs. Rishang and others**" AIR 1969 SC 663, "**P.T. Rajan vrs. T.P.M. Sahir and others**" AIR 2003 SC 4063.

Now it is to be seen whether the petitioner has discharged this burden. P.Ws. 1 to 5 have stated that most of the voters, whose names were scored off the Electoral Roll would have cast their votes in favour of the petitioner, had their names not been scored off. Casting of votes in an election depends upon a variety of factors. It is not possible on the part of any person to know as to how many of the voters would cast vote in favour of a particular candidate. So, it cannot be accepted that most of the voters whose names were scored off the Electoral Roll would have exercise their franchise in favour of petitioner. In the election held in the year, 2000, the Respondent owned the election by a margin of 8, 500 votes, while the names of 14,000 voters which have been scored off the Electoral Roll of the year, 2004, were very much there as found from the evidence of O.P.W. No. 1 (Respondent). So, learned counsel for the respondent submitted that if the names of those 14,000 voters had been allowed to be retained in the Electoral Roll of the year, 2004, the respondent would have secured more votes. There is also some force in this submission. The petitioner has failed to discharge his burden to prove that deletion of names of 14,000 voters from the Electoral Roll has materially affected the result of the election, so far as it concerns the respondent. As such the decision of **Baidyanath Ranjira (Supra)** can be of no help to the petitioner. So, it is held that deletion of names of 14,000 voters from the Electoral Roll before it was finally published would not vitiate the entire election process as discussed above.

In the result, the ELEPT stands dismissed. Parties to bear their own cost.

List of witnesses examined for the petitioner

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|---------|----------------------------|
| P. W. 1 | . . Bidesi Gauda |
| P. W. 2 | . . Gola Gauda |
| P. W. 3 | . . Arsuli Nayak |
| P. W. 4 | . . Suryanarayan Padhi |
| P. W. 5 | . . B. Dandapani Patra |
| P. W. 6 | . . Alaka Panda |
| P. W. 7 | . . Ramesh Chandra Pradhan |

List of witnesses examined for Respondent No. 1

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|---------|---------------------------|
| R. W. 1 | . . Bikram Keshari Arukha |
| R. W. 2 | . . Prasanta Kumar Nayak |

List of documents exhibited for the petitioner

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| Ext. 1 | . . Voter Identity Card of Bidesi Gauda |
| Ext. 2 | . . Voter Identity Card of Gola Gauda |
| Ext. 3 | . . Voter Identity Card of Arsuli Nayak |
| Ext. 4 | . . Voter Identity Card of Suryanarayan Padhi |
| Ext. 5 | . . Affidavit sworn to by B. Dandapani Patra |

- Ext. 6 . . *Orissa Gazette* No. 407, dated the 24th March 2004
- Ext. 7 . . Letter of the Chief Electoral Officer, Orissa issued from Secretariat of the Election Commission of India, dated the 14th February 2004.
- Ext. 8 . . Complaint filed by B. Dandapani Patra to the Chief Electoral Officer, Orissa, Bhubaneswar, dated the 7th April 2004.
- Ext. 9 . . Complaint filed by B. Dandapani Patra to the Chief Electoral Officer, Orissa, Bhubaneswar, dated the 12th April 2004.
- Ext. 10 . . Final result sheet in Form No. "20" of 66—Bhanjanagar Assembly Segment, dated the 13th May 2004.
- Ext. 11 . . Certified copy of 159 voter list 2004 of Kulada village of 66—Bhanjanagar Assembly Constituency.
- Ext. 12 . . Certified copy of 159 voter list 2004 of Gothali village of 66—Bhanjanagar Assembly Constituency.
- Ext. 13 . . Certified copy of voter list of 2003 of Mujagarh village of 66—Bhanjanagar Assembly Constituency.
- Ext. 14 . . Affidavit sworn to by P.W. 1 (Bideshi Gauda)
- Ext. 15 . . Affidavit sworn to by P.W. 3 (Arsuli Nayak)
- Ext. 16 . . Affidavit sworn to by P.W. 4 (Suryanarayan Padhi)

List of documents exhibited for Respondent No. 1

- Ext. A . . Summary revision of Electoral Roll issued by the Chief Secretary of Orissa to all the Government Departments, dated the 21st November 2003.
- Ext. B . . Receipt showing final published Electoral Roll by General Secretary of Ganjam Congress Committee, dated the 25th March 2004.
- Ext. C . . Letter No. 7727, dated the 17th December 2003 issued from the office of the C.E.O., Government of Orissa, Home (Elections) Department.
- Ext. D . . Letter No. 8144, dated the 31st December 2003 issued from the office of C.E.O. Government of Orissa, Home (Elections) Department.
- Ext. E . . Letter No. 553/ Election, dated the 12th January 2004 issued by Additional C.E.O.-cum-Additional Secretary to Government of Orissa, Home (Elections) Department.
- Ext. F . . Letter No. 23/OR/03, dated 30th January 2004 sent by Fax message issued by E.C.I. to the C.E.O., Orissa, Bhubaneswar.
- Ext. G . . Letter No. 964/Election, dated the 30th January 2004 issued by Additional C.E.O.-cum-Additional Secretary to Government, Home (Elections) Department to all Electoral Registration Officers and Sub-Collectors.

- Ext. H : Letter No. 1678, dated the 15th February 2004 of the Additional Chief Electoral Officer to all District Election Officers (with enclosures).
- Ext. I : Summary revision of Electoral Rolls, dated the 1st January 2004 as qualifying date by E.C.I. letter, dated the 9th March 2004.
- Ext. J : Letter No. 3274/Election, dated the 9th March 2004 issued by Additional C.E.O.-cum-Additional Secretary to Government to the E.R.O., Bhanjanagar (with enclosure).
- Ext. K : Letter No. 1, dated the 13th May 2004 issued by Sub-Collector-cum-Returning Officer, Bhanajnagar to the Collector and D.E.O., Phulbani.
- Ext. L : Fax message, dated the 13th May 2004 received from the Election Commission of India addressed to C.E.O., Orissa, Bhubaneswar giving clearance to declare the result of the Constituency named therein.
- Ext. M : Original record showing total number of votes polled, rejection of votes, number of valid votes and different candidates getting number of valid votes (with Form No. 21-E).
- Ext. N : Affidavit sworn to by D.W. 1 (Shri Bikram Keshari Arukha), dated the 23rd August 2005.
- Ext. P : Affidavit sworn to by D.W. 2 (Shri Prasant Kumar Nayak), dated the 23rd August 2005.
- Ext. R : Finally published voter list of Aska Constituency.

R.N. BISWAL
Orissa High Court, Cuttack

By order
R. K. SRIVASTAVA
Secretary